

REMARKS

Following entry of the amendment above, claims 57-59, 62-66 and 74 will be pending in this application. Applicants have amended claims 57, 58 and 74. Claim 57 has been amended to reflect that the claimed peptides consist essentially of the amino acid sequences listed in SEQ ID NOS: 1-26. Claim 58 has been amended merely to utilize currently preferred claim dependence terminology. Claim 74 has been amended to reflect its nature as a composition of matter claim, and thus it no longer makes reference to immune response modulation and "immunogenic" features. Moreover, the claim has been amended to reflect that the claimed compositions contain one or more different peptide species, wherein each of the peptide species consist essentially of an amino acid sequence listed in any one of SEQ ID NOS: 1-26.

Applicants respectfully submit that the foregoing amendments add no new matter. Moreover, Applicants reserve their right to pursue inventive subject matter no longer or not yet claimed in this or a related application.

Applicants respectfully request reconsideration of their invention as now claimed in view of the following remarks.

Supplemental Information Disclosure Statement

Applicants note that the Examiner has crossed out reference BQ in the IDS of October 10, 2003. The information will be provided in a supplemental IDS.

Rejection Under 35 U.S.C. § 112, First Paragraph

Applicants respectfully traverse the rejection of claims 57-59, 62-66 and 74 under 35 U.S.C. § 112, first paragraph as allegedly not enabling one of skill in the art to make the invention commensurate in scope with these claims. Further, the claims are rejected as allegedly no

conveying to one skilled in the art that the inventors had possession of the claimed invention at the time the application was filed.

Specifically, the Examiner alleges that the specification, while being enabling for the peptide consisting of SEQ ID NO: 3 and compositions that contain the peptide, does not reasonably provide enablement and written description for peptides and compositions that comprise SEQ ID NO: 3. While Applicants disagree with these rejections, as the instant claims have been amended herein to remove the allegedly open-ended terminology and thus refer to peptides "consisting essentially of" particular amino acid sequences, Applicants respectfully submit that these rejections are now moot and, as such, they request their withdrawal.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Applicants respectfully traverse the rejection of claim 74 under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the term "immune response-modulating" is allegedly not clearly defined in the specification, and modulating encompasses the mutually exclusive properties of either increasing or decreasing an immune response. Therefore, a person of skill in the art would allegedly not be apprised of the metes and bounds of the composition in the invention as claimed.

Applicants respectfully disagree with the basis of this rejection and reserve the right to use this term. However, Applicants have amended claim 74 to no longer include this allegedly indefinite term. Accordingly, Applicants respectfully submit that the basis for this rejection has been obviated, and request that this rejection also be withdrawn.

Rejection Under 35 U.S.C. § 102

Applicants respectfully traverse the rejection of claims 57-59, 62-66 and 74 under 35 U.S.C. 102(b) as allegedly anticipated by Carson et al., U.S. Patent No. 5,773,570 (hereinafter

“Carson”). A *prima facie* rejection of a claim for anticipation requires that the cited reference describe, explicitly or inherently, all of the elements of the rejected claim.

The Examiner alleges that Carson teaches a purified antigenic *E. coli* dnaJ protein that comprises SEQ ID NO: 3 and its use in a vaccine. Also allegedly disclosed are fusion proteins containing dnaJ that can be included in a pharmaceutical composition, which can include immunoadjuvants, such as Freund’s complete or incomplete adjuvant or cytokines.

As mentioned above, Applicants have amended claims 57 and 74 to remove the allegedly open-ended claim language, to limit to invention to substantially purified peptides consisting essentially of selected amino acid sequences, and compositions comprising such. Consequently, Applicants submit that Carson does not describe, explicitly or inherently, all of the elements of the rejected claims. Accordingly, Applicants respectfully request withdrawal of the rejection.

In re Application of:
Albani et al.
Application No.: 10/001,938
Filed: October 31, 2001
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Attorney Docket No.: UCSD1360-1

CONCLUSION

In view of the above amendments and remarks, it is submitted that the claims are in condition for allowance, and a notice to that effect is respectfully requested. The Examiner is invited to contact Applicant's undersigned representative if there are any questions relating to this application.

Enclosed is Check No. 572951 in the amount of \$60.00 to cover the fee for Petition for One Month Extension of Time fee and Check No. 572963 in the amount of \$180.00 for the Supplemental Information Disclosure Statement fee. The Commissioner is hereby authorized to charge any additional fees associated with the filings submitted herewith, or credit any overpayment to Deposit Account No. 07-1896.

Respectfully submitted,

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